

## **Part 6**

### **Local Industry Representative License Act**

#### **32B-11-601 Title.**

This part is known as the "Local Industry Representative License Act."

Enacted by Chapter 276, 2010 General Session

#### **32B-11-602 Definitions.**

Reserved

Enacted by Chapter 276, 2010 General Session

#### **32B-11-603 Commission's power to issue local industry representative license.**

- (1)
  - (a) Before a person described in Subsection (2) may represent an alcoholic product of a manufacturer, supplier, or importer, the person shall obtain a local industry representative license from the commission in accordance with this part.
  - (b) A violation of this Subsection (1) is a class B misdemeanor.
- (2) The commission may issue a local industry representative license to a person who is:
  - (a)
    - (i) an individual resident of Utah;
    - (ii) a Utah partnership;
    - (iii) a Utah corporation; or
    - (iv) a Utah limited liability company; and
  - (b) employed by a manufacturer, supplier, or importer, to represent a liquor product with the department, a package agency, licensee, or permittee under this title, whether compensated by salary, commission, or another means.
- (3) An individual staff member of a local industry representative licensee is not required to be separately licensed.
- (4) A local industry representative may represent more than one manufacturer, supplier, or importer at a time.
- (5)
  - (a) A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products with the department, a package agency, licensee, or permittee, except that staff of a manufacturer, supplier, or importer who is not a local industry representative shall register with the department, on a form provided by the department, before the staff represents an alcoholic product while in the state with the department, a package agency, licensee, or permittee.
  - (b) A manufacturer, supplier, or importer described in Subsection (5)(a) and its staff are subject to the same operational requirements of this part and Chapter 4, Criminal Offenses and Procedure Act.

Enacted by Chapter 276, 2010 General Session

#### **32B-11-604 Application for local industry representative license.**

- (1) To obtain a local industry representative license, a person shall submit to the department:

- (a) a written application in a form prescribed by the department;
  - (b) a nonrefundable \$75 application fee;
  - (c) an initial license fee of \$125, which is refundable if a local industry representative license is not issued;
  - (d) verification that the person is:
    - (i) a resident of Utah;
    - (ii) a Utah partnership;
    - (iii) a Utah corporation; or
    - (iv) a Utah limited liability company;
  - (e) an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent;
  - (f) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, or any law enforcement officer to have an unrestricted right to enter, during normal business hours, the specific premises where the local industry representative conducts business;
  - (g) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
  - (h) any other information the commission or department may require.
- (2) A local industry representative licensee is not required to pay an additional license fee to represent more than one manufacturer, supplier, or importer.

Amended by Chapter 334, 2011 General Session

**32B-11-605 Renewal requirements for local industry representative license.**

- (1) A local industry representative license expires on December 31 of each year.
- (2) To renew a local industry representative license, a person shall submit to the department by no later than November 30 of the year the license expires:
  - (a) a completed renewal application in a form prescribed by the department;
  - (b) a renewal fee of \$125; and
  - (c) an affidavit stating the name and address of any manufacturer, supplier, or importer the local industry representative licensee represents at the time of submitting the renewal application.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of the local industry representative license effective on the date the existing local industry representative license expires.

Amended by Chapter 334, 2011 General Session

**32B-11-606 Specific qualifications for local industry representative.**

- (1) The commission may not issue a local industry representative license to:
  - (a) a person who is disqualified under Section 32B-1-304; or
  - (b) unless otherwise provided:
    - (i) a retail licensee that sells, offers for sale, or furnishes liquor;
    - (ii) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
    - (iii) an individual, partnership, corporation, or limited liability company who holds an interest in a retail licensee that sells, offers for sale, or furnishes liquor.
- (2) If a person to whom a local industry representative license is issued under this part no longer possesses the qualifications required by this title for obtaining that local industry representative license, the commission may suspend or revoke that local industry representative license.

Enacted by Chapter 276, 2010 General Session

**32B-11-607 Commission and department duties before issuing local representative license.**

- (1)
  - (a) Before the commission may issue a local industry representative license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a local industry representative license should be issued.
  - (b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.
- (2) Before issuing a local industry representative license, the commission shall:
  - (a) determine that the person filed a complete application and is in compliance with Sections 32B-11-604 and 32B-11-606;
  - (b) determine that the person is not disqualified under Section 32B-1-304; and
  - (c) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

**32B-11-608 Operational requirements for local industry representative license.**

- (1)
  - (a) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state, shall comply with this title and rules of the commission.
  - (b) If a person knowingly violates Subsection (1)(a):
    - (i) the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:
      - (A) a local industry representative licensee;
      - (B) individual staff of a local industry representative licensee; or
      - (C) both a local industry representative licensee and staff of the local industry representative licensee; and
    - (ii) if the conditions of Subsection (1)(c) are met, the commission may order:
      - (A) the removal of the manufacturer's, supplier's, or importer's products from the department's sales list; and
      - (B) a suspension of the department's purchase of those products for a period determined by the commission.
  - (c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:
    - (i) directly commits the violation; or
    - (ii) solicits, requests, commands, encourages, or intentionally aides another to engage in the violation.
- (2) A local industry representative licensee shall display its license in the local industry representative licensee's principal place of business.
- (3)
  - (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of the manufacturers, suppliers, and importers the local industry representative licensee represents.
  - (b) A local industry representative licensee shall notify the department in writing of a change to its accounts list within 14 days from the date the local industry representative licensee:

- (i) acquires the account of a manufacturer, supplier, or importer; or
  - (ii) loses the account of a manufacturer, supplier, or importer.
- (4)
  - (a) A local industry representative licensee shall make and maintain the records the department requires for at least three years.
  - (b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).
- (5) Staff of a local industry representative licensee may not be:
  - (a) a retail licensee that sells, offers for sale, or furnishes liquor;
  - (b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
  - (c) a minor.
- (6)
  - (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.
  - (b) A local industry representative license has no monetary value for any type of disposition.
- (7) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state:
  - (a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act, may:
    - (i) assist the department in:
      - (A) ordering, shipping, and delivering merchandise;
      - (B) providing new product notification;
      - (C) obtaining listing and delisting information;
      - (D) receiving price quotations;
      - (E) providing product sales analysis;
      - (F) conducting shelf management; and
      - (G) conducting educational seminars; and
    - (ii) to acquire new listings:
      - (A) solicit orders from the department; and
      - (B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;
  - (b) may not sell liquor within the state except to:
    - (i) the department; and
    - (ii) a military installation;
  - (c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;
  - (d) may not sell or furnish any liquor to any person within this state other than to:
    - (i) the department; or
    - (ii) a military installation;
  - (e) except as otherwise provided, may not advertise a product the local industry representative licensee represents in violation of this title or any other federal or state law;
  - (f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and
  - (g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 by the department.
- (8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).

- (a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.
- (b)
  - (i) An industry representative sample of liquor may not exceed one liter.
  - (ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:
    - (A) wine;
    - (B) heavy beer; or
    - (C) a flavored malt beverage.
- (c) An industry representative sample may only be of a product not presently listed on the department's sales list.
- (d)
  - (i) An industry representative sample shall be shipped:
    - (A) prepaid by the manufacturer, supplier, or importer;
    - (B) by common carrier and not via United States mail; and
    - (C) directly to the department's central administrative warehouse office.
  - (ii) An industry representative sample may not be shipped to any other location within the state.
- (e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:
  - (i) clearly identifying the product as an "industry representative sample"; and
  - (ii) clearly stating:
    - (A) the FOB case price of the product; and
    - (B) the name of the local industry representative for whom it is intended.
- (f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.
- (g) The department shall affix to a container a label clearly identifying the product as an "industry representative sample."
- (h) The department shall:
  - (i) account for and record each industry representative sample received;
  - (ii) account for the industry representative sample's disposition; and
  - (iii) maintain a record of the industry representative sample and its disposition for a two-year period.
- (i) An industry representative sample may not leave the premises of the department's central administrative warehouse office.
- (j) A local industry representative licensee's and a local industry representative licensee's staff may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.
- (k) The department shall destroy the unused contents of an opened product remaining after a product is sampled under controlled and audited conditions established by the department.
- (l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:
  - (i) the contents destroyed under controlled and audited conditions established by the department; or
  - (ii) added to the inventory of the department for sale to the public.

Amended by Chapter 307, 2011 General Session  
Amended by Chapter 334, 2011 General Session

**32B-11-609 Notifying department of change in ownership.**

The commission may suspend or revoke a local industry representative license if a local industry representative licensee does not immediately notify the department of a change in:

- (1) ownership of the business;
- (2) for a corporate owner, the:
  - (a) corporate officers or directors; or
  - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation;or
- (3) for a limited liability company:
  - (a) managers; or
  - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session